

STATE OF VERMONT
DEPARTMENT OF VERMONT HEALTH ACCESS
CSG GOVERNMENT SOLUTIONS, INC.

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CONTRACT #45649

STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, Department of Vermont Health Access (hereinafter called “State”), and CSG Government Solutions Inc., with a principal place of business in Chicago, IL, (hereinafter called “Contractor”). Contractor’s form of business organization is an S-Corporation. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of Independent Verification and Validation Services in support of MMIS/HIE and IE&E modernization efforts. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$10,145,000.00.

4. **Contract Term.** The period of Contractor’s performance shall begin on May 16, 2023, and end on May 15, 2028. Contract will be for a period of five-years with an option to renew for up to two additional twelve-month periods by agreement between the Parties.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Contacts.**

THE CONTACTS FOR THIS AGREEMENT ARE AS FOLLOWS:

	State Fiscal Manager	State Authorized Representative	For the Contractor
Name:	Tim Harvey	Joseph Liscinsky	Michael Karris
Title:	Financial Manager I	Health Enterprise Director II	Account Executive
Phone #:	802-585-8433	802-233-6212	217-741-6848
E-mail:	Tim.harvey@vermont.gov	Joseph.Liscinsky@vermont.gov	mkarris@csgdelivers.com

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The name, title and contact information of the State Fiscal Manager and State Authorized Representative(s) shall be provided to Contractor, in writing, from the Commissioner or Deputy Commissioner of the Department of Vermont Health Access (DVHA) if the designated person(s) are changed during the term of this contract.

The name, title and contact information of the Contractor Authorized Representative shall be provided to State, in writing, from the Contractor Chief Operating Officer if the designated person is changed during the term of this contract.

9. Notices to the Parties under this Agreement

To the extent notices are made under this agreement, the parties agree that such notices shall only be effective if sent to the following persons as representative of the parties:

	STATE REPRESENTATIVE	CONTRACTOR
Name:	Office of General Counsel	Kirk Swanson
Address:	NOB 1 South, 280 State Drive Waterbury, VT 05671	180, North Stetson Avenue Suite 3200 Chicago, IL 60601
Email:	Ahs.dvhalegal@vermont.gov	kswanson@csgdelivers.com

The parties agree that notices may be sent by electronic mail except for the following notices which must be sent by United States Postal Service certified mail: termination of contract, contract actions, damage claims, breach notifications, alteration of this paragraph.

10.. ***Attachments.*** This Contract consists of 52 pages including the following attachments which are incorporated herein:

- 1) Standard State Contract
- 2) Attachment A: Statement of Work
- 3) Attachment B: Payment Provisions
- 4) Attachment C: Standard State Provisions for Contracts and Grants
- 5) Attachment D: IT Professional Services Terms and Conditions
- 6) Attachment E: Business Associate Agreement
- 7) Attachment F: Agency of Human Services Customary Contract Provisions
- 8) Attachment G: State of Vermont – Federal Terms Supplement
- 9) Appendix I – Subcontractor Compliance Form

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9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment D
- 3) Attachment C
- 4) Attachment G
- 5) Attachment A
- 6) Attachment B
- 7) Attachment E
- 8) Attachment F
- 9) Appendix I

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

STATE OF VERMONT

DEPARTMENT OF VERMONT HEALTH ACCESS

DocuSigned by:
Andrea De la Bruere 5/11/2023

ANDREA DELABRUERE, COMMISSIONER

DATE

NOB 1 South, 280 State Drive

Waterbury, VT 05671-1010

Phone: 802-241-0239

Email: Andrea.DeLaBruere@vermont.gov

CONTRACTOR

CSG GOVERNMENT SOLUTIONS, INC.

DocuSigned by:
Kirk Swanson 5/10/2023

KIRK SWANSON, CHIEF FINANCIAL OFFICER DATE

180 N. Stetson Avenue, Suite 3200

Chicago, IL 60601

Phone: 847-691-7506

Email: Kswanson@csgdelivers.com

ATTACHMENT A – STATEMENT OF WORK

A. OVERVIEW

Medicaid Management Information System (MMIS) and Health Information Exchange (HIE) Projects:

Contractor shall conduct separate Independent Verification and Validations (IV&V) for the following State MMIS/HIE Projects, which shall be collectively referred to herein as “Projects”:

1. Full life cycle IV&V for the modules or other CMS approved activities that comprise the MMIS that includes HIE efforts.
2. Design, Development, and Implementation of approved Projects.

In addition, Contractor shall conduct IV&V services for all MMIS Projects as required by CMS or for CMS optional IV&V activities which the State selects, including any new required or optional IV&V activities for new MMIS requirements that CMS adds in the future.

Integrated Eligibility and Enrollment (IE&E) Projects:

Contractor shall conduct IV&V services for all IE&E Projects as required by CMS and FNS or for CMS/FNS optional IV&V activities which the State selects, including any new required or optional IV&V activities for new IE&E requirements that CMS/FNS adds in the future. All IV&V activities shall be included in the IV&V Plan and the Work Plan, which shall be updated as needed for the IE&E Program.

The State has a preference of reuse of current and future State platforms. State will provide updates to Contractor as they become available.

B. TASK APPROVAL PROCESS

All work performed by Contractor must be pre-approved by the State Authorized Representative(s). The State reserves the right to refuse any deliverable required under this Contract for failure to sufficiently incorporate the deliverables detailed and contracted for.

All work must be reviewed and accepted by the State Authorized Representative(s) before the Contractor may submit an invoice to the State.

C. MMIS/HIE AND IE&E TASKS

TASK 1 - DEVELOP, MAINTAIN, AND EXECUTE THE IV&V PLAN

The Contractor shall develop an IV&V Plan during Project Initiation including a Project schedule and will maintain and execute the IV&V Plan throughout the duration of the contract. The activities the Parties agree to perform as part of Project Initiation include:

1. Contractor shall schedule and conduct an initial introductory meeting with the State Authorized Representative and other participants the State may identify to understand the State’s expectations for the IV&V Project, status for MMIS/HIE and IE&E Projects, review Project templates, and discuss any required forms for the IV&V staff (e.g., State’s preferred deliverable review form).
2. State shall review Contractor’s High-Level IV&V Plan to ensure that State’s and Contractor’s expectations for the IV&V Project are in alignment. The IV&V Plan will include processes for governing the ongoing management of Project scope, schedule, cost, quality, resources, risks, issues, and communications. Deliverable review templates intended to be used in subsequent IV&V work will be included as attachments. A high-level Contractor Work Plan will include milestones for State and DDI vendors’ tasks that are dependencies for completing IV&V deliverables defined in this Contract. The IV&V Plan will also detail when and how the DDI vendors will be engaged in the process. The IV&V Plan will be developed in accordance with TASK 1A set forth below.

- a. As new Contractor staff on-board, Contractor shall submit a request for administrative actions required by the State so that Contractor's employees may access State buildings, State systems, and State documentation repositories, including the State's SharePoint sites. Contractor understands that its employees and any authorized subcontractors may be required to provide identification and to sign the usual and customary forms associated with the particular access requested. Contractor further understands that some access requested may require Contractor's staff participate in State provided security-specific training including, but not limited to Health Insurance Portability and Accountability Act (HIPAA) training.

TASK 1A – High Level IV&V Plan

The Contractor's High Level IV&V Plan shall include evaluation of the State and DDI Contractor's activities, aligned according to Project Management Body of Knowledge (PMBOK®) phases and the needs of the State, and State Medicaid Project Schedules. The IV&V Plan shall describe the Contractor's methodology for delivering IV&V services for the MMIS/HIE and IE&E Projects, and will include key System Development Lifecycle (SDLC) phase focus areas, including the following:

1. Project Governance and Management.
2. Strategy/Planning/Procurement Life Cycle.
3. Requirements Analysis and Management.
4. Use Case Development and Application (e.g., Supporting Design, Development, Testing, User).
5. System Design (e.g., Conceptual and Detailed Designs).
6. Development Methodology and Tools.
7. Testing Plan, Methodology and Reports (e.g., System, Integration and User Acceptance Testing).
8. Defects Prevention, Detection and Fixes.
9. Integration and Interface Control Plan, Activities and Reports.
10. Configuration Management.
11. Data Standards, Conversion Planning and Execution.
12. Security and Privacy.
13. Deployment Planning and Alternatives.
14. User Training Plan and Implementation.
15. Knowledge Transfer and Transition Planning.
16. Hosting Environments.
17. Warranty Requirements and Compliance.
18. Certification Activities.

Contractor shall share knowledge of all Project activities, tasks, and documents readily and openly through the Project life cycle and shall formally transition any remaining information and/or documentation during Project Closing. Contractor shall ensure that all Project data, artifacts, reports, and deliverables are housed in a Project repository throughout the course of the Project life cycle, which shall be hosted on both Contractor's platform and on State infrastructure. Contractor shall turn over the Project repository to State staff upon completion of the IV&V Contract. The Contractor shall modify Contractor's standard close out process to meet specific State requirements.

TASK 1B – Comprehensive IV&V Plan

Building upon the High Level IV&V Plan described in TASK 1A, Contractor shall detail its approach to managing the IV&V services for the MMIS/HIE, and IE&E Projects, applying the standard principles of PMBOK® and Institute of Electrical and Electronic Engineers (IEEE). The existing IV&V Comprehensive Plan will be updated to include HIE Program and update MMIS and IE&E Program as needed. Processes for governing the ongoing management of Project scope, schedule, cost, quality, resources, risks, issues, and communications will be detailed in the Comprehensive IV&V Plan. Contractor shall facilitate a meeting with the State Authorized Representative to review the Comprehensive IV&V Plan Deliverable Expectation

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Document (DED) and solicit any feedback. Contractor shall incorporate any changes into the DED and submit a final version to the State for approval. The DED will be used as an outline to update the State's existing Comprehensive IV&V Plan. The Contractor shall develop a Comprehensive IV&V Plan, which will be submitted to the State Authorized Representative for approval within 10-days of Contract execution.

TASK 1C – Comprehensive IV&V Plan Updates

Contractor shall maintain the Comprehensive IV&V Plan and associated Work Plan as needed, or as required by the State, throughout the Project life cycle. This is done as a normal course of Project execution and is not a payment deliverable.

TASK 1D – Work Plan

Contractor shall revise the current Work Plan to align with the existing State MMIS/HIE, and IE&E Projects' schedules gathered during Task 1 Project Initiation activities (described above). The Work Plan shall include milestones for DDI vendors' tasks that are dependencies for completing IV&V deliverables, as well as Contractor resource assignments for completing Project tasks and deliverables. The revised Work Plan will be submitted to the State Authorized Representative as part of the Comprehensive IV&V Plan, within ten (10) business days of Contract execution. The Contractor shall apply the standard principles of the IEEE and PMBOK. Contractor acknowledges and agrees that the actual number of DDI deliverables, the content of these deliverables, and the actual DDI implementation schedule, will be determined by the State and DDI vendors only after the State executes one or more contracts for these services. Further, these contracts and the deliverables required may be modified as the State and DDI vendors may agree.

TASK 1E – Work Plan Updates

1. Throughout the Project life cycle, at the State's request, Contractor shall update the IV&V Work Plan to include new or revised activities, deliverables, schedules and/or staffing to address various needs of the MMIS/HIE, and/or IE&E Programs, as defined in the State's Medicaid Enterprise Work Plan. Contractor understands and agrees that the State and any DDI vendors with whom the State may engage, may in the normal course of Contract modification and program management, modify DDI Project schedules and the number, name, and composition of deliverables, to the extent that the overall MMIS/HIE and IE&E program scope is not expanded.
2. State will provide to Contractor any and all information pertinent to DDI planned or actual DDI activities which impacts or may potentially impact the accuracy of the current Work Plan.
3. Contractor shall submit the updated IV&V Work Plan and additional Contractor staff requirements to the State for review and approval. The State Authorized Representative will review and approve, or request changes to, the Work Plan and Contractor staffing within ten (10) business days. The Subject Matter Expert (SME) hours pool will be used to fund approved increases in Contractor staff. The State may replenish the SME hours pool through a Contract amendment.

TASK 2 - PERFORM INITIAL, CONSOLIDATED MONTHLY, AND FINAL IV&V ASSESSMENTS

The IV&V assessments and corresponding reports provide an independent, objective perspective representing a point-in-time snapshot of the health of the Projects. To complete the Initial, Consolidated Monthly, and Final IV&V Assessments, Contractor shall perform independent research; attend Project meetings to understand Project processes, current activities, and status; and coordinate and facilitate brief interviews with key Project stakeholders as needed. The IV&V assessments will include:

1. Initial IV&V Assessment
2. MMIS/HIE Program Consolidated Monthly IV&V Assessments
3. IE&E Program Consolidated Monthly IV&V Assessments
4. Ad Hoc Reports
5. Final IV&V Assessments
6. Final IV&V Closeout Report

TASK 2A – Initial IV&V Assessment

The Initial IV&V Assessment provides a comprehensive initial assessment of the current active Projects and analyzes project management plans, processes, documents, schedules, risks, issues, budgets, and requirements. To conduct the Initial IV&V Assessment, the Contractor shall use a Risk Assessment Checklist customized to the Projects during Project Initiation. In addition:

1. Contractor shall prepare and deliver the baseline Initial IV&V Assessment not later than forty-five (45) calendar days following the IV&V project kick-off meeting. The Initial IV&V Assessment may be included as a part of the MMIS/HIE and IE&E Program Consolidated Monthly IV&V Assessments.

TASK 2B – MMIS/HIE AND IE&E Program Consolidated Monthly IV&V Assessments

1. Contractor shall write complete Program Consolidated IV&V Assessments monthly throughout the term of this Contract as described in the IV&V Work Plan.
2. Contractor shall submit these assessments to the State Authorized Representative for review and approval by 5:00PM EST by the 15th calendar day following the end of each month.
3. Contractor shall use the Risk Assessment Checklist data collected during the reporting period to complete the Consolidated Monthly IV&V Assessments.
4. Contractor shall exercise its professional expertise and best efforts to document specific risks or issues identified by Contractor in these Consolidated Assessments.
5. Contractor shall prepare Consolidated Assessments that comply with the requirements of 45 CFR § 95.626.
6. Contractor is responsible for the development, delivery, and support of all assessments and reports sent to State and Federal partners, including all status reporting.
7. Contractor shall ensure that its IV&V Project Manager will:
 - a. Ensure the Work Plan is updated to accurately reflect the activities and completion dates for the IV&V assessments;
 - b. Collect information from various sources such as interviews, project documentation, participation in meetings, and other sources;
 - c. Analyze information collected, using the approach and methods specified in the agreed IV&V Plan;
 - d. Draft the Consolidated IV&V Assessments to include prioritized recommendations for improvement and remediation actions;
 - e. Deliver the Consolidated IV&V Assessments to State's Authorized Representative and Federal agencies concurrently;
 - f. Review the Consolidated IV&V Assessments with the State, and other parties specified by State's Authorized Representative; and
 - g. Update the Assessments to correct mistakes of fact, if needed, and provide an updated final version of the Consolidated IV&V Assessments to State's Authorized Representative and other parties who may be identified by State's Authorized Representative.

TASK 2C – Final IV&V Assessments

Contractor shall deliver a Final IV&V Assessment for each MMIS/HIE, and IE&E CMS-certifiable DDI Project, included as a chapter in the monthly Consolidated IV&V Assessment delivered for the reporting period in which the project is deemed to be complete. Project completion is defined as State's official transition and close out from DDI to Maintenance and Operations or ten (10) business days prior to the IV&V Contract end date. Final IV&V Assessments shall consist of a wrap up of the IV&V activities and to share lessons learned and best practices about the Project. The wrap up includes performance assessment against Project defined goals, objectives, schedule, and budget, in addition to any remaining observations and recommendations. The final assessments ensure IV&V Project information, artifacts, reports, and deliverables are housed in a Project repository that is accessible by the State. The Contractor shall conduct the final assessments by gathering inputs and using the Risk Assessment Checklist.

TASK 2D – Meeting Minutes (for meetings facilitated by the IV&V Contractor)

The Contractor shall produce meeting minutes resulting from meetings used to review the IV&V assessment with the State, DDI vendor, and/or other stakeholders. The Contractor ensures that summaries are complete and accurate and that all decisions, action items, risks, and issues are appropriately noted.

TASK 2E – Perform Ongoing Risk and Issues Management

The Contractor shall identify, capture, and communicate to the State all risks and issues which, in Contractor's professional opinion, are adversely impacting, or which may adversely impact, the MMIS, HIE or IE&E objectives; perform risk analysis to determine importance and whether or not the risk/issue is within the Project's control; propose mitigation or corrective action plans; and review risk, issues, and corrective actions plans with the State. Contractor shall include its Risks and Issues reporting in the MMIS/HIE and IE&E Consolidated Monthly IV&V Assessments, which shall be reviewed with the State during the monthly status meetings. If a Risk or Issue is deemed urgent, Contractor shall immediately notify the State, so that corrective action can be initiated without regard for the schedule of monthly status meetings.

Risk and Issues Management is comprised of the following sub-tasks, which will be included within the Consolidated Monthly IV&V Assessments (Tasks 2E.1 – 2E.2).

TASK 2E.1 – Risk and Issues Log (and/or Inputs to the Project Risk and Issues Log)

Contractor shall continue to utilize its established online Risk Assessment Tracking Tool in Contractor's platform that provides a platform for risks and issues identified for the Projects to be reviewed, triaged, assigned, and tracked. For the Projects, the Contractor shall identify Risks and Issues and determine which Risks and Issues might affect the Project and are either within or outside of the Medicaid Project's control. The Contractor shall prioritize risks and issues based upon its assessment of the probability and consequence of each Risk and Issue so that the State may determine which risks the State should focus on based on Risks or Issues of greatest importance.

TASK 2E.2 – Recommended Risk/Issue Responses (e.g., for risks accept, transfer, mitigate, avoid) and Action Plans

Contractor shall prepare action plans to enhance opportunities or minimize threats to the State Authorized Representative (or Designee(s), if any, within three (3) business days of finalizing each such action plan. The Contractor shall communicate Risks and Issues to the State and monitor the execution of action plans and evaluate their effectiveness, track and review residual risks, and identify any new risks or issues through participation in Project meetings, observance of project management activities and processes, and targeted interviews with Key Project Staff as needed.

TASK 2F – Review and Evaluate Plans, Processes and Deliverables

Contractor shall conduct formal, independent, and detailed assessments of the MMIS/HIE, and IE&E program State and DDI vendor activities planned, associated business and technology processes, and MMIS/HIE, and IE&E program State and DDI vendor deliverables and Performance Measure (metric) Quality Assurance

Surveillance Plan (QASP), as applicable, including those produced by the State and any third parties with which the State may engage for the creation of MMIS/HIE, and IE&E program State and DDI vendor deliverables. This also includes a review of past Project activities including requirements gathering and procurements, which, in the opinion of Contractor are required in order to make observations and to suggest improvements which will result in improved MMIS/HIE and IE&E program performance. The sub-tasks for Deliverable Reviews will be reported on in the Consolidated Monthly Assessments (2F.1 – 2F.5).

TASK 2F.1 – Deliverable Review Procedures (Within Comprehensive IV&V Plan)

For each DDI vendor deliverable, Contractor shall conduct a review tailored to the subject matter presented. Since the content and purpose of each State and DDI vendor deliverable varies, the type of review will also vary. The State and DDI vendor deliverable review process is part of the Quality Management plan for this engagement, including QASP Review Procedures, and will be detailed in the Contractor's Comprehensive IV&V Plan.

TASK 2F.2 – Review of Deliverable Expectation Documents (DEDs)

As applicable, Contractor shall review the DDI vendors' DEDs and/or QASPs, to assess adherence to IEEE 1012 standards as applicable. Contractor shall make recommendations for deliverable acceptance and/or QASP criteria to ensure the DEDs and subsequent deliverables are thorough, comprehensive, and meet state and federal requirements.

TASK 2F.3 – Recommendation to Accept/Reject Deliverables with Supporting Comments

Contractor shall review and evaluate the Project DDI vendors' Deliverables for correctness, accuracy, completeness, and readability within five (5) business days of submission. Additionally, Contractor shall use the appropriate industry standards and guidelines in the review of the deliverables, as well as applicable requirements of 45 CFR § 95.626. In some cases, the standard may have been specified via the contractual documents, while in other cases it may be a best practice for the specific subject matter. The Contractor shall vary its reviews according to the guidance set forth in IEEE 1012 for each phase of the SDLC and to ensure that the deliverables meet the expectations set forth and agreed to in the DED. Contractor shall also lead the deliverable review walkthroughs with the State, as appropriate and document findings and recommendations to either accept or reject the deliverable. The State and Contractor will have five (5) business days for concurrent review of the deliverables. The State will then meet with Contractor for the deliverable walkthrough meeting. This meeting will take place within the 4th business day of the concurrent review. If the reviewed deliverable requires changes, the follow up review time will be four (4) business days.

TASK 2F.4 – Report on Status of Actions to Address Deliverable Deficiencies

Should deficiencies be identified during the Deliverable Reviews (Task 2F), Contractor shall track these deficiencies through resolution. The status of actions to address deliverable deficiencies will be reported in the Consolidated Monthly IV&V Assessments (Task 2B). The Contractor and the State will continuously evaluate /review the deliverables and any subsequent changes as well as impacts, until each deliverable has been approved. This is done as a normal course of Project execution.

TASK 2F.5 – Meeting Minutes

Contractor shall facilitate meetings to review IV&V recommendations on deliverable acceptance as appropriate, and will produce meeting minutes. The Contractor shall ensure that summaries are complete and accurate and that all decisions, action items, risks, and issues are appropriately noted. Meeting minutes will be distributed within two business days of the meeting.

TASK 2G – Report on Status

Contractor shall have monthly status meetings with the State and other parties designated by the State Authorized Representative to provide an update regarding: (i) the IV&V activities and deliverables in accordance with the Work Plan; (ii) results from the ongoing Risk and Issue management task (Task 2E); and

(iii) outstanding actions from the Review and Evaluate Vendor Deliverables task (Task 2F). The Project status is included in Task 2B Consolidated Monthly IV&V Assessments and serves as an opportunity to provide summary information from the Consolidated Monthly Assessments.

TASK 3 – SUPPORT MMIS CERTIFICATION

TASK 3A – Prepare and Facilitate Certification Training for State Staff

To support federal systems certification, Contractor shall provide Certification training for Project staff at the initiation of each module. This training will provide an understanding of expectations, including the role of IV&V, and preparing for Operational Readiness and Certification Reviews with CMS.

TASK 3B – Evaluation of DDI Outcomes Against CMS Certification Expectations

Throughout the Projects' life cycle, Contractor shall assess the State's compliance with CMS Certification including adherence to Medicaid Information Technology Architecture (MITA) 3.0, and Vermont's MITA SS-A, and the conditions for enhanced funding. Contractor shall provide support and oversight to the State and DDI vendors' effort to prepare for the Certification, support mock Certification Reviews to evaluate certification compliance, and work with the State and DDI vendor to review and provide guidance on required Intake Forms and Artifacts. This evaluation is performed quarterly throughout the Project life cycle in alignment with the applicable CMS certification requirements.

TASK 3C – CMS Visit Support (before, during, and after)

Contractor shall review the necessary documentation and artifacts to ensure required documentation is submitted to CMS in advance of the scheduled certification review and will participate in the CMS Certification Review process and any meetings requested by the State. Contractor shall monitor and track the status of any identified gaps or updates to the review documentation required by CMS pre/during and post meetings with CMS. Contractor shall review the CMS Certification Report and, if needed, support the preparation of a formal response on behalf of State at the direction of the State Authorized Representative.

TASK 3D – CMS Certification Report Review and Response

Upon receipt of the CMS Certification Review Report, Contractor shall review the report and provide recommendations within ten (10) business days of receiving the report to the State Authorized Representative for inclusion in the CMS Certification Review Response Letter. Furthermore:

- a. The Parties understand and agree that the State may at its sole discretion include or exclude such responses in the State's CMS Certification Review Response Letter.
- b. Furthermore, the State may modify any responses drafted by Contractor and include the modified responses in the State's CMS Certification Review Response Letter.

TASK 4 – CMS & FNS IMPLEMENTATION ADVANCE PLANNING DOCUMENT (IAPD)

- a. Contractor shall monitor the MMIS/HIE and IE&E Program status to identify potential schedule risks that may impact the State's funding.
- b. Contractor shall support the collection of necessary information in accordance with the CMS IAPD regulations and FNS IAPD Handbook.
- c. Contractor shall provide insight and recommendations on events/project changes that warrant updates to the IAPD and support the State and the MMIS/HIE and IE&E Program teams in the submission of a final IAPDU to update all aspects of the Project.
- d. Contractor shall support the closure of the IAPD verifying that all activities associated with the design, development, and implementation phase, approved through the IAPD, have been

successfully completed to the satisfaction of CMS, FNS and any other contributing Federal agencies.

- e. Contractor shall participate in the CMS and FNS post-implementation review of costs and systems functionality, if review is conducted.

TASK 5 – OVERVIEW REPORT ON STATUS

TASK 5A - Ad Hoc Reports

1. Contractor shall provide ad hoc Reports as requested by State Authorized Representatives or the MMIS/HIE or IE&E Program Manager, to address State-identified Project topics.

TASK 5B – Operational Readiness Dashboard

1. Contractor shall develop and publish an Operational Readiness Dashboard report and to facilitate one or more meetings to review an Operational Readiness Dashboard at least ninety (90) calendar days prior to systems implementation in a production environment:
 - a. This Dashboard shall identify technical and functional tasks used to measure readiness for implementation.
 - b. Contractor shall customize the Operational Readiness Checklist consistent with requirements articulated by Project Managers to meet Program-specific needs.
 - c. Contractor shall maintain the Dashboard to track completion of Operational Readiness activities and to support the Program implementation decision-making process.

TASK 6 – MEETING MINUTES

- a. Contractor shall document meeting minutes for all meetings that Contractor facilitates or leads.
- b. Contractor shall use its best efforts and professional expertise to ensure that minutes are complete and accurate and that all decisions, action items, risks, and issues are appropriately noted.
- c. Contractor shall distribute meeting minutes to stakeholders identified in the Program Charter, or as otherwise directed by State's Authorized Representative, within two (2) business days following a meeting.

D. MMIS AND IE&E TASKS

TASK 1 Overview – Enterprise Executive Summary Report

1. Contractor shall convene and to conduct status meetings with the State, in which meetings Contractor shall inform the State of:
 - a. Enterprise activities and deliverables in accordance with the Work Plan;
 - b. Results from Section 1 Task 2 and Section 2 Task 3, Ongoing Risks and Issues Management; and
 - c. Any outstanding actions from Section 1 Task 2 and Section 2 Task 4, Review and Evaluate Processes and Deliverables.
2. At least two (2) business days prior to each status meeting, Contractor shall prepare a written status report addressing the following content and presented in a format to be provided by the State:
 - a. Reporting time period;
 - b. Summary of the current status (e.g., schedule, scope, budget, risks, issues) of the MMIS/HIE and IE&E Program DDI.
 - c. Major activities and deliverables completed in the last reporting period;
 - d. Major upcoming activities and deliverables for the next reporting period;
 - e. Status of existing Risks and Issues;
 - f. Identification of new Risks and Issues; and
 - g. Other relevant topics (e.g., scope changes, decisions made).

3. In addition, Contractor shall:

- a. Provide periodic enterprise executive summary reports to stakeholders, such as the HSE Senior Leadership Team, in relation to MMIS and IE&E reviews and recommendations;
- b. Develop and deliver ad hoc reports to stakeholders regarding the IE&E work progress and significant issues or barriers to progress; and
- c. Create and review with the State an Operational Readiness Review Dashboard report prior to the State's use of the developed IE&E production system for business operations.

E. REQUEST FOR APPROVAL TO SUBCONTRACT

- a. Before the Contractor may subcontract any work under this Contract, the Contractor must submit a written Request for Approval to Contract form, which the State will provide to Contractor upon Contractor's written request. Formal written requests in relation to subcontracting shall be sent to the State's Authorized Representative as specified in paragraph B within this Attachment A.
- b. Upon receipt of the Request for Approval to Contract form, the State shall review and respond to the request within ten (10) business days.
- c. Contractor shall be responsible for directing and supervising each of its subcontractors and any other person performing any of the Work under subcontracting agreement with Contractor. Contractor shall be liable and responsible to the State for all acts or omissions of subcontractors and any other person performing any of the Work under a subcontracting agreement with Contractor or any subcontractor.

F. CMS REQUIRED LANGUAGE (MMIS/HIE AND IE&E COMBINED)

1. STREAMLINED MODULAR CERTIFICATION PROCESS TIMELINE MMIS/HIE/IE&E

The Streamlined Modular Certification Process Timeline administered by CMS contains three life-cycle phases and two types of certification milestone reviews. The milestone reviews occur at two different phases of system/module implementation. The types of milestone reviews are the Operational Readiness Review (ORR) and the CR or Final Certification Review. The life cycle and its milestone reviews are explained in detail in the Streamlined Module Certification Guidance released by CMS.

2. Conflict of Interest

Any contractor (and its subcontractors) serving in the role of independent verification and validation (IV&V) service contractor/provider to the state Medicaid Management Information System (MMIS) and IE&E Program is prohibited from soliciting, proposing, or being awarded any project management, quality assurance, software design, development, or other manner of planning, design, development, or implementation phase activity on the MMIS and IE&E Project for which these IV&V services are being procured.

This exclusion is executed in accordance with federal regulations at 45 CFR 95.626, which require that this IV&V effort "be conducted by an entity that is independent from the State (unless the State receives an exception from the CMS/HHS)."

For purposes of clarity, the Center for Medicaid and CHIP Services (CMCS) defines "the State" in the above regulatory citation as being a state's IT project, and the umbrella agency or department. The primary purpose of this exclusion is to ensure that the IV&V service provider avoids any real or perceived conflicts of interest. For federal purposes, the scope of IV&V includes planning, management, and other programmatic activities in conformance with the term's usage in federal regulations at 45 CFR 95.626.

Independent V&V is the set of verification and validation activities performed by an agency not under the control of the organization developing the software. IV&V services must be provided and managed by an organization that is technically and managerially independent of the subject software development project. This independence takes two mandatory forms.

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First, technical independence requires that the IV&V services provider organization, its personnel, and subcontractors are not and have not been involved in the software development or implementation effort or in the Project's initial planning and/or subsequent design. Technical independence helps ensure that IV&V review reports are free of personal or professional bias, posturing, or gold plating.

Second, managerial independence is required to make certain that the IV&V effort is provided by an organization that is departmentally and hierarchically separate from the software development and program management organizations. Managerial independence helps ensure that the IV&V service provider can deliver findings and recommendations to state and federal executive leadership and management without restriction, fear of retaliation, or coercion (e.g., reports being subject to prior review or approval from the development group before release to outside entities, such as the federal government).

G. Key Project Staff

1. Contractor Personnel will be properly educated, trained and qualified for the Services they are to perform, and Contractor ensure that Contractor's staff receive appropriate initial and ongoing training appropriate to their respective roles. Additionally:
 - a. Contractor shall be responsible, at its own cost and expense, for any and all recruitment, hiring, Contractor-specific training, education and orientation for all Contractor Personnel assigned or to be assigned to perform Services or support the Requirements.
 - b. All Contractor Personnel, in addition to any Contractor security policies and procedures, shall be required to comply with the security requirements in this Contract
 - c. Contractor shall conduct its hiring process in compliance with all applicable Federal and State laws to include, but not be limited to, anti-discrimination laws.
 - d. **Eligibility for Employment:** Contractor shall verify that all prospective employees are eligible for employment in the United States.
 - e. **Criminal Records:** Contractor or an agent of Contractor shall perform criminal background checks on all prospective employees utilizing a national criminal database acceptable to the State. Before any Contractor Personnel begin work on the Services such background check shall have returned a "no record" result or, to the extent that the result revealed that a felony record or records exist for a given individual, the associated conviction(s) shall be unrelated to the work to be performed as specified under the Equal Employment Opportunities Commission's EEOC Enforcement Guidance regarding the employment of convicted felons issued April 25, 2012. Contractor shall provide the State with notice of proposed Contractor Personnel with felony or misdemeanor convictions that involve a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes; a felony conviction for drug possession; or a crime involving the distribution or trafficking of illegal drugs and/or controlled substances.
 - f. The timing for transfer, reassignment or replacement of Contractor Personnel will be coordinated with requirements for timing and other elements of the Services so as to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services or any failures to maintain Service Levels. For purposes of this Contract, "Contractor Personnel" means and refers to Contractor's employees and employees of Contractor's permitted subcontractors or permitted agents assigned by Contractor to perform services under this Contract.
 - g. Contractor shall assign the following Contractor staff positions ("Key Project Staff"), to meet the Requirements of this Contract:
 - o Account Executive
 - o Project Manager MMIS/HIE and IE&E IV&V Teams

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- MMIS/HIE Functional Lead
 - IE&E Functional Lead
 - MMIS/HIE Technical Lead
 - IE&E Technical Lead
 - MMIS/HIE and IE&E Certification Analyst
- h. Contractor agrees that during the entire term of this Contract, that Contractor's personnel filling the Key Project Staff positions will be devoted to the work describe in this Contract as follows:
- Contractor's and IV&V Project Manager, MMIS Technical Lead, MMIS Functional Lead, IE&E Functional Lead, IE&E Technical Lead, and MMIS and IE&E Certification Analyst staff will be devoted full-time to the work described in this Contract, which is considered to be one hundred sixty (160) hours per calendar month, for each person, during the term of this Contract.
 - With the exception of the Account Executive, all Key Project Staff hours will be worked onsite during State office hours, at State offices, or other State defined locations, during normal business hours unless a different schedule is agreed with the State's Authorized Representative. While on State premises, Contractor's staff are not permitted to perform work for any other client of Contractor.

2. **Key Project Staff Changes**

Contractor shall not make a permanent change to the project assignment of Key Project Staff identified in paragraph G.1.h during the term of the Contract without providing the State written justification, full background of the proposed new Key Project Staff consistent with Section G.1.e, a comprehensive transition plan where Contractor absorbs the costs of onboarding the new individual. Contractor shall follow the Change Order Process to request to replace a Key Project Staff and obtain prior written approval of the State's Authorized Representative. State approvals for replacement of Key Project Staff will not be unreasonably withheld. If required, Contractor shall provide a temporary replacement for its Key Staff (Account Executive, Project Manager and Technical Lead) to cover paid time off, when the time off may have impacts on the work being performed by the project team. Contractor shall provide a replacement resource consistent with Section G.1.e and will provide the State with advanced notice and obtain prior written approval of the State's Authorized Representative when this interim replacement need is warranted, including for how long and what the transition plan is to assure the interim replacement is seamless and cost neutral to the State.

- a. Upon written notification to Contractor by State's Authorized Representative, Contractor shall replace any Key Project Staff member whose performance is, in the sole discretion of State's Authorized Representative, deemed unacceptable.
- b. If Contractor fails in any material respect to meet the Contract, and a root-cause analysis determines that the failure was due in material part to an inadequate number of Contractor Personnel, then Contractor shall promptly assign appropriate personnel to address the inadequacy at no additional cost to the State.
- c. Notwithstanding the foregoing, the State acknowledges that Key Project Staff may become unavailable due to termination of employment for any reason, through disability or death, illness, or through leave of absence such as FMLA or National Guard duty for example. In such circumstances, Contractor shall promptly notify the State in writing of the impending or actual departure of any Key Project Staff and of the qualifications and identify of proposed replacement Key Project Staff.
- d. The replacement of Key Project Staff shall have comparable or greater skills and applied experience than staff being replaced and be subject to reference and background checks as set forth herein. Replacement Key Project Staff proposed by Contractor must be approved in writing by State's Authorized Representative. Contractor shall provide at least three recent references, including two

references with experience with the individual in a similar IV&V role as proposed for any proposed replacement Key Project Staff and agrees that the State may contact these references prior to rendering any decision as to the acceptability of the proposed replacement staff.

H. Subject Matter Expertise (SME).

1. To conduct Tasks 1 – 3 of Section 1 MMIS/HIE and IE&E Tasks, in addition to the key staff, the Contractor shall provide SMEs, with prior experience in the implementation and/or operation of similar systems/functions. The Contractor shall provide SME hours up to the maximum amount set forth in Attachment B for the contract period, which will be used as approved by the State Authorized Representative.

SMEs will be used to provide expertise in executing the following activities to support Tasks 1 – 3 of Section 1 MMIS/HIE and IE&E Tasks:

- a. verify DED for each deliverable, as applicable;
- b. evaluate vendor deliverables against the approved DEDs for completeness;
- c. provide recommendations for improvements and modifications based on industry experience;
- d. participate in requirements validation, joint application design, and system configuration sessions to identify risks and issues that may affect the Project if not mitigated or resolved;
- e. verify processes and standards support the early identification and remediation of defects in Project deliverables;
- f. ensure that DDI vendors tools do not conflict with, or present compatibility issues for tools or standards, including EPMO standards, for future State initiatives;
- g. evaluate completeness of testing based on required system functionality;
- h. participate in Project status meetings, vendor status meetings, design sessions, testing triage, test results review and defect resolution meetings to provide Project specific expertise;
- i. participate in periodic review and provide recommendations based on industry and State best practices; and
- j. support system certification training and preparation activities.

SME hours utilized in the reporting period will be included in the Monthly IE&E and MMIS/HIE IV&V Reports, with budget and actual usage of the Project to-date.

The following process shall be executed to assign SME hours from the pool to the MMIS/HIE and IE&E Projects.

- a. Before a SME may perform any work under this Contract, the Contractor must submit a written Request for Approval to the State's Authorized Representative. The written Request for Approval shall contain the SME's resume, reason for the Request for Approval, an estimated number of hours to be used from the available SME pool hours and an applicable start date for the SME.
- b. Upon receipt of the Request for Approval to authorize a SME, the State shall review and respond to the request within ten (10) business days.
- c. Contractor shall be responsible for directing and supervising each of its SMEs.

I. Control of Contractor Personnel

- a. Contractor shall be fully responsible for the management, compensation, and performance of all Contractor Personnel, and the filing of any and all returns and reports and the withholding and/or payment of all applicable federal, State, and local wage tax, or employment-related taxes, including, but not limited to, income taxes, gross receipt taxes, taxes measured by income, social security taxes, and unemployment taxes for Contractor and Contractor's employees;
- b. Notwithstanding the foregoing Contractor's employees shall adhere to the State's policies and

procedures, of which Contractor is made aware while on State Premises and shall behave and perform in a professional manner. The State, may, in its reasonable discretion, require Contractor to replace any Contractor Personnel, including but not limited to Key Project Staff, working hereunder who does not adhere to, behave, and perform consistent with the State's policies and procedures, or otherwise engages in unprofessional or unethical conduct, or abuses any illegal substance or alcohol, or engages in illegal activities or consistently underperforms.

- c. The State shall provide written notice to Contractor of the requirement of replacement, or with whom there are irresolvable personality conflicts. Contractor shall use reasonable efforts to promptly and expeditiously replace Key Project Staff and replace all other personnel within fifteen (15) business days of receipt of the written notice unless otherwise mutually agreed.
- d. The State's right to request replacement of Contractor personnel hereunder relates solely to the removal of individuals from work on this Contract with the State and does not create an employment relationship. Nothing in this Contract authorizes the State to direct the Contractor's termination of the employment of any individual.

J. Meeting Protocols

For regular Project status meetings, Contractor's Project Manager shall provide a meeting agenda at least one (1) business day in advance of the meeting and any handouts at least one (1) business day in advance of the scheduled meeting.

K. Project Document Storage

The Contractor shall establish, identify to the State, and use an electronic project document storage repository which includes document storage and collaboration features found in Microsoft SharePoint or a similar tool. Contractor shall store all electronic work products, including project documents, artifacts and deliverables created by Contractor or obtained from the State or State's other vendors during the term of this contract. This project document repository shall be accessible to the Contractor and the State. Within fifteen (15) business days of Contract execution, Contractor and State will agree, document, and implement access rights, privileges, and credentials for Contractor's and State's program team members. The document created for this agreement shall specify the scope of access granted. State access to the project document repository and all project material contained therein shall continue until the termination of this Contract and shall be consistent with the provisions in Attachment D to this Contract. The Contractor shall utilize electronic document formats which are readable, modifiable, and otherwise useable by the State for its intended purposes.

- a. Each report shall include a Project dashboard at the top outlining the overall status of the Project in terms of the standard triple constraint: cost, time, resources (using a legend or icon of green, yellow, and red based upon the following definitions):
 - Green – on track to deliver committed scope by committed deadline with committed resources/funding.
 - Yellow – not on track to deliver committed scope by committed deadline with committed resources/funding but have a plan to get back to green.
 - Red – not on track and currently do not have a plan to get back to green. Need project management intervention or assistance.
- b. In the event of yellow or red overall Project status, there should be a specific task(s) and/or issue(s) identified as yellow or red which are the root cause of the overall Project status being yellow or red. These items shall be presented in sufficient detail to determine the root-cause. The Status Report shall provide a link to the Risks and Issues Log for more detail.

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- c. The report shall include a budget section outlining original contract costs by deliverable with billed and paid-to-date information by deliverable and in total.
- d. The State's Authorized Representative, or his/her designee, and Contractor's Project Manager will, at the Project introductory meeting, collaborate to reach to agreement on the exact format of the Project documentation and reports.

L. Resources

- a. Unless otherwise expressly provided in this Contract, all Resources required for the proper performance of Services by Contractor hereunder shall be under the control, management and supervision of Contractor and Contractor shall be responsible, at its sole cost and expense, for procuring, obtaining and making available, in proper and qualified, professional and high-quality working and performing order, all such Resources.
- b. PROPOSAL ASSISTANCE. If at any time during the Term, the State elects to request any bid, quote, information and/or proposal from one or more third party service providers for the provision of all or any part of the Services being provided by Contractor hereunder, Contractor shall cooperate with the State by providing the State reasonable access to relevant Contractor Personnel for the benefit of the State in connection with the State's request.
- c. PREMIER CUSTOMER. Contractor shall provide the State with the following:
 - i. **Continuous Improvement.** Throughout the Term, Contractor shall, subject to and always consistent with the Requirements and provisions of this Contract, proactively stay abreast of emerging technology and processes and present to the State for the State's consideration: (i) opportunities to implement improved Contractor Resources, processes and methodologies in connection with the Services; (ii) opportunities to implement improved State Resources, processes and methodologies then currently used by the State in performing services and operations which have been retained by and are performed by the State and which relate to the Services; (iii) any other opportunities Contractor may choose to bring to the State's attention which Contractor is or becomes aware of and may be of potential benefit for the State to consider; and (iv) potential improvements in Service Levels, whether identified as proven techniques and tools from other installations within its operations or through industry awareness or otherwise. Contractor shall include references to all of the foregoing items in the periodic reports provided to the State in connection with this Contract. Contractor shall cooperate with the State in evaluating such proposed improvements, which, for the avoidance of ambiguity, shall not be implemented by Contractor unless reviewed, approved and agreed by the State.
 - ii. **Disaster Recovery Priority.** In accordance with the requirements of this Contract, in the event of a disaster, material interruption or any disruption in or affecting the Services, in prioritizing and dedicating efforts by Contractor to recover and resume normal and proper Service delivery and the provision of services, information and resources to its other customers generally, no other Contractor customer will receive higher priority than the State of Vermont, including all efforts and activities with respect to the Resources involved in performing such efforts and activities and recovering or resuming Services.

M.State-Caused Delays

Contractor acknowledges that the State may not be able to meet the time frames specified in an IMS or that the State may determine that it is necessary to delay and/or modify the timing and sequencing of the activities and tasks specified in Contractor's Work Plan as provided in the IMS. While the State is committed to the project and shall use reasonable efforts to provide staff and resources necessary to satisfy all such time frames, the State shall not be held responsible or deemed in default for any delays in activity or tasks completion provided the State uses its reasonable efforts to accomplish its designated responsibilities and obligations as set forth in the Work Plan. In addition, the State may, at its option, delay implementation and installation of the State's programs functionality, work product, or any part thereof. Notwithstanding any provision to the contrary, if the State or State's DDI vendor causes a significant delay in the implementation of the work detailed in Contractor's Work Plan, Contractor or State may make a Change Request in accordance with Section Q, Change Order Process, and, in the sole discretion of the State, an amendment to this Contract may be initiated. In the event that the State causes a significant delay in the work described in Contractor's Work Plan, Contractor shall adjust the Work Plan and Payment Milestones deadlines to take into account any State-caused delays; provided, however, that Contractor shall continue to perform any and all activities not affected by such State-caused delay. In the event the State's adjustment to the Work Plan causes Contractor scheduling conflicts or personnel unavailability, the State and Contractor shall prepare a revised mutually agreeable Work Plan which may delay the commencement and completion dates of the project and shall take into consideration the readjusted time frames and any necessary resequencing of the activities. Such readjustment, rescheduling or modification of Contractor's Deliverables as specified in Attachment A of this contract shall not result in additional cost to State Contractor if the delay is less than or equal to thirty (30) calendar days. For purposes of this Section, a "significant delay" shall be defined as a single delay, or combination of delays, of thirty (30) or more calendar days in any of the deliverables specified in Contractor's Work Plan.

N. Acceptance

Each calendar month, or part of a calendar month within the term of this Contract, will constitute a separate Acceptance Period. Within each Acceptance Period, Contractor shall submit deliverables to the State. The State will review Contractor's submitted deliverables and State's Authorized Representative will, within ten (10) business days after the end of each Acceptance Period, issue a written notification to Contractor indicating the acceptance or rejection of a deliverable or deliverables. If all of Contractor's deliverables due in an Acceptance Period are accepted, then a State's Authorized Representative will issue a written statement which shall constitute a Certificate of Acceptance, and such certificate is required prior to payment for any deliverable(s). Formal Deliverable Acceptance by the State can only be made in writing by State's Authorized Representative. If Contractor's deliverable(s) are rejected, the specific reasons for this rejection must be in writing. In the event that the State rejects Contractor's deliverable(s), the State may in its sole discretion require a Corrective Action Plan be implemented to specify corrective measures that Contractor shall implement, and to monitor progress in implementing the correction.

O. Third Party Cooperation

The State may hire other independent contractors to implement or assist in the implementation of the programs' objectives. Contractor shall cooperate with the State and the third party(ies), including provision of: (i) written documentation requested by the State; (ii) commercially reasonable assistance and support services to such third party; and (iii) reasonable access to Contractor as necessary for such third parties to perform their work. The State shall use reasonable efforts to require such third parties to comply with Contractor's reasonable requirements regarding confidentiality, operations, standards, and security. Contractor shall support and maintain such third-party work product, provided the service provider complies with any documentation applicable to Contractor in respect of the Services involved.

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P. Change Order Process

Any changes to this Contract shall follow the DVHA Portfolio Change Control Process:

<https://dvha.vermont.gov/administration/grants-and-contracts/dvha-portfolio-change-control-plan>

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: AHS.DVHAInvoices@vermont.gov
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows:
7. **RETAINAGE:** The State will hold back from payment to Contractor, ten (10%) percent of each monthly invoice submitted to the State by Contractor. Upon delivery of the State's written Acceptance in accordance with the Acceptance process described in paragraph N of Attachment A, Contractor may submit one quarterly invoice for all retainage withheld during the prior calendar quarter, and the retainage withheld will be paid to the Contractor according to the payment terms specified in paragraph 3 of this Attachment B.

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Budget Table May 16, 2023 - May 15, 2028 with Option Year (s) Pricing						
MMIS & IE&E Deliverables Year One		Frequency	Year One Total	Date Due	Monthly Total	Total
Deliverable A: MMIS/HIE Section C Task 2B		Monthly	12	15 days after month end	\$ 82,766.67	\$ 993,200.00
Deliverable B: IE&E Section C Task 2B		Monthly	12	15 days after month end	\$ 80,066.67	\$ 960,800.00
					Year One Total	\$ 1,954,000.00
MMIS & IE&E Deliverables Year Two		Frequency	Year Two Total	Date Due	Monthly Total	Total
Deliverable A: MMIS/HIE Section C Task 2B		Monthly	12	15 days after month end	\$ 82,766.67	\$ 993,200.00
Deliverable B: IE&E Section C Task 2B		Monthly	12	15 days after month end	\$ 80,066.67	\$ 960,800.00
					Year Two Total	\$ 1,954,000.00
MMIS & IE&E Deliverables Year Three		Frequency	Year Three Total	Date Due	Monthly Total	Total
Deliverable A: MMIS/HIE Section C Task 2B		Monthly	12	15 days after month end	\$ 82,766.67	\$ 993,200.00
Deliverable B: IE&E Section C Task 2B		Monthly	12	15 days after month end	\$ 80,066.67	\$ 960,800.00
					Year Three Total	\$ 1,954,000.00
MMIS & IE&E Deliverables Year Four		Frequency	Year Four Total	Date Due	Monthly Total	Total
Deliverable A: MMIS/HIE Section C Task 2B		Monthly	12	15 days after month end	\$ 82,766.67	\$ 993,200.00
Deliverable B: IE&E Section C Task 2B		Monthly	12	15 days after month end	\$ 80,066.67	\$ 960,800.00
					Year Four Total	\$ 1,954,000.00
MMIS & IE&E Deliverables Year Five		Frequency	Year Five Total	Date Due	Monthly Total	Total
Deliverable A: MMIS/HIE Section C Task 2B		Monthly	12	15 days after month end	\$ 82,766.67	\$ 993,200.00
Deliverable B: IE&E Section C Task 2B		Monthly	12	15 days after month end	\$ 80,066.67	\$ 960,800.00
					Year Five Total	\$ 1,954,000.00
Total Deliverables for Period of Performance May 16, 2023 - May 15, 2028						\$ 9,770,000.00
Subject Matter Expert (SME) Budget (Utilized as directed by the State)						
Subject Matter Expert MMIS/HIE Year One						\$ 37,500.00
Subject Matter Expert IE&E Year One						\$ 37,500.00
Subject Matter Expert MMIS/HIE Year Two						\$ 37,500.00
Subject Matter Expert IE&E Year Two						\$ 37,500.00
Subject Matter Expert MMIS/HIE Year Three						\$ 37,500.00
Subject Matter Expert IE&E Year Three						\$ 37,500.00
Subject Matter Expert MMIS/HIE Year Four						\$ 37,500.00
Subject Matter Expert IE&E Year Four						\$ 37,500.00
Subject Matter Expert MMIS/HIE Year Five						\$ 37,500.00
Subject Matter Expert IE&E Year Five						\$ 37,500.00
Total SME Budget for Period of Performance May 16, 2023 - May 15, 2028						\$ 375,000.00
Total IV&V Contract Budget for Period of Performance May 16, 2023 - May 15, 2028						\$10,145,000.00
Option Year Pricing						
Year Six MMIS/HIE	\$ 1,042,860.00					
Year Seven IE&E	\$ 1,009,100.00					
Year Six MMIS/HIE	\$ 1,042,860.00					
Year Seven IE&E	\$ 1,009,100.00					
SME work will be paid at the following hourly rates:						
Title of Positions		Years One-Five				
SME IE&E Senior Consultant		\$ 174.00				
SME IE&E Consultant		\$ 160.00				
SME MMIS/HIE Senior Consultant		\$ 174.00				
SME MMIS Consultant		\$ 160.00				
Option Year SME Rate						
Title of Positions		Option Years Six & Seven				
SME IE&E Senior Consultant		\$ 183.00				
SME IE&E Consultant		\$ 168.00				
SME MMIS/HIE Senior Consultant		\$ 183.00				
SME MMIS/HIE Consultant		\$ 168.00				
Payment Assumptions:						
Monthly Reports will be due 15 days after the month end.						

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or

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indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

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11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or

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- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued

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performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

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- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
TERMS AND CONDITIONS (rev. 07/14/2022)

1. OWNERSHIP AND LICENSE IN DELIVERABLES

1.1 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

1.2 State Intellectual Property. The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

1.3 Work Product. All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

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To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State's internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State's obligations with respect to Confidential Information, authorize others to do the same on the State's behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State. If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

2.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

2.2 Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential

and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

2.3 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq ("State Data"). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement attached hereto as Attachment E. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State.

State Data shall not be stored, accessed from, or transferred to any location outside the United States. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

3. SECURITY OF STATE INFORMATION.

3.1 Security Standards. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal*

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Information Processing Standards Publication 200 and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

3.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

4.1 General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

4.2 Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of

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\$1,000,000 per claim, \$3,000,000 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$1,500,000.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

6. **REMEDIES FOR DEFAULT.** In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

7. **TERMINATION**

7.1 Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting any and all State data, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

7.2 **Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

8. **DESTRUCTION OF STATE DATA.** At any time during the term of this Contract within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of Standards and Technology (NIST) approved methods and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

9. **SOV Cybersecurity Standard Update 2023-01:** Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 23-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

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ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT

SOV CONTRACT BUSINESS ASSOCIATE: CSG GOVERNMENT SOLUTIONS

SOV CONTRACT No. 45649 CONTRACT EFFECTIVE DATE: May 1, 2023

THIS BUSINESS ASSOCIATE AGREEMENT (“AGREEMENT”) IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, OPERATING BY AND THROUGH ITS DEPARTMENT OF VERMONT HEALTH ACCESS (“COVERED ENTITY”) AND PARTY IDENTIFIED IN THIS AGREEMENT AS CONTRACTOR OR GRANTEE ABOVE (“BUSINESS ASSOCIATE”). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT OR GRANT (“CONTRACT OR GRANT”) TO WHICH IT IS ATTACHED.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. **Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

“*Agent*” means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

“*Breach*” means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

“*Business Associate*” shall have the meaning given for “Business Associate” in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

“*Electronic PHI*” shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

“*Individual*” includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“*Protected Health Information*” (“*PHI*”) shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

“*Required by Law*” means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

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“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity’s *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity’s HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

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4. **Business Activities.** *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. **Electronic PHI Security Rule Obligations.**

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

- a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;
- b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;
- c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;
- d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;
- e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and
- f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents*. *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of *Unsuccessful Security Incidents*; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

6. **Reporting and Documenting Breaches.**

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6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. **Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont,

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Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. **Access to PHI.** *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. **Amendment of PHI.** *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. **Accounting of Disclosures.** *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, *Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. *Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Business Associate* is in compliance with this Agreement.

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*.

Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

15. Return/Destruction of PHI.

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

16. Penalties. *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. Training. *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a "*Business Associate*" of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual's PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. *Reports* or data containing *PHI* may not be sold without Covered Entity's or the affected *Individual's* written consent.

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18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

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ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

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Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals

with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. **Data Protection and Privacy:**

Protected Health Information: Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place or birth, mother’s maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. **Abuse and Neglect of Children and Vulnerable Adults:**

Abuse Registry. Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults

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if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

Computing and Communication: Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

Intellectual Property/Work Product Ownership: All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

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If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

Security and Data Transfers: Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. **Other Provisions:**

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at www.vermont211.org.

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Voter Registration: When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

Lobbying: No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

AHS ATT. F 5/16/2018

ATTACHMENT G

STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction)

for all Contracts and Purchases of Products and Services Using Federal Funds

(Revision date: July 28, 2022)

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

CLEAN AIR ACT

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

FEDERAL WATER POLLUTION CONTROL ACT

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.** Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension*

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(1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

CONTRACTOR BREACH, ERRORS AND OMISSIONS

- a. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
- b. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
- c. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

TERMINATION FOR CONVENIENCE

1. General

- a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
- b. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
- c. No compensation will be allowed for items eliminated from the Contract.
- d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.

2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.

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- e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
- f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.

3. Claim by Contractor

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. To the extent settlement is properly based on Contractor costs, settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.

Additional Terms

1. This agreement incorporates the following federal requirements: 7 CFR 277.18(l)(1)(ii) [https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-C/part-277/section-277.18#p-277.18\(l\)\(1\)\(ii\)](https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-C/part-277/section-277.18#p-277.18(l)(1)(ii)) and 2 CFR200.315 <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR8feb98c2e3e5ad2/section-200.315>.

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APPENDIX I
Department of Vermont Health Access
Subcontractor Compliance Form

Date: _____

Original Contractor/Grantee Name: _____

Contract #: _____

Subcontractor Name: _____

Scope of Subcontracted Services:

Is any portion of the work being outsourced outside of the United States? YES NO
(If yes, do not proceed)

All vendors under contract, grant, or agreement with the State of Vermont, are responsible for the performance and compliance of their subcontractors with the Standard State Terms and Conditions in Attachment C. This document certifies that the Vendor is aware of and in agreement with the State expectation and has confirmed the subcontractor is in full compliance (or has a compliance plan on file) in relation to the following:

- Subcontractor does not owe, is in good standing, or is in compliance with a plan for payment of any taxes due to the State of Vermont
- Subcontractor (if an individual) does not owe, is in good standing, or is in compliance with a plan for payment of Child Support due to the State of Vermont.
- Subcontractor is not on the State's disbarment list.

In accordance with State Standard Contract Provisions (Attachment C), the State may set off any sums which the subcontractor owes the State against any sums due the Vendor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in Attachment C.

Signature of Subcontractor

Date

Signature of Vendor

Date

Received by DVHA Business Office

Date

Required: Contractor cannot subcontract until this form has been returned to DVHA Contracts & Grants Unit.

Language to be included from State of Vermont Bulletin 3.5 in all subcontracting agreements:

Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

Taxes Due to the State:

- D. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- E. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- F. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- G. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.